

ENTERED

March 02, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

MARCUS BELL,

Plaintiff,

VS.

“SGT TREVINO”, *et al.*,

Defendants.

§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 1:22-CV-081

ORDER

Plaintiff Marcus Bell, representing himself, filed this prisoner civil rights action, alleging that Defendant Sergeant Santos Trevino, a corrections officer at Willacy County State Jail, failed to intervene as other inmates attacked Bell.¹ (Complaint, Doc. 1) Sgt. Trevino filed a Motion to Dismiss and for Summary Judgment (Doc. 59).

The Magistrate Judge recommends that Bell’s claims for retaliation and failure to protect be dismissed for failure to exhaust administrative remedies. (R&R, Doc. 85) The Magistrate Judge further recommends that even if Bell had exhausted his administrative remedies as to these causes of action, he would still fail to state a claim for retaliation on which relief could be granted, and his failure to protect claim would be subject to summary judgment. (*Id.*) Bell filed a “Rebuttal to Recommendation and Report of the Magistrate Judge” (Doc. 89), which the Court construes as his objections. In this document, Bell does not address the Report and Recommendation’s finding that his claims are unexhausted.²

The Court reviews the challenged portions of the Report and Recommendation de novo and all other portions for clear error. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(3). As Bell

¹ Bell also sued “L. Webb” and “J. Guana”, who he alleged also worked at Willacy County State Jail during the relevant time period. The Court previously dismissed Bell’s claims against these two defendants. (Order, Doc. 35)

² After the Magistrate Judge issued the Report and Recommendation, Bell also filed a “Rebuttal to Defendant Sgt. Trevino’s Reply to Plaintiffs [sic] Response to Motion to Dismiss and Motion for Summary Judgment” (Doc. 88). The document appears to be a sur-reply, although Bell did not request leave of court for the filing. In any event, the Court has considered the document, which does not address Bell’s failure to exhaust his administrative remedies.

has presented no objection to the Report and Recommendation as to the exhaustion of administrative remedies, the Court reviews the recommendation on this issue for clear error. Having done so, the Court finds no clear error within it. Because the Court agrees that the Motion to Dismiss should be granted on exhaustion grounds, it need not reach Sgt. Trevino's Motion for Summary Judgment.


As a result, the Court **OVERRULES** Marcus Bell's objections and **ADOPTS** the Report and Recommendation (Doc. 85) as to Bell's failure to exhaust his administrative remedies. It is:

ORDERED that Defendant Sergeant Santos Trevino's Motion to Dismiss and for Summary Judgment (Doc. 59) is **GRANTED** as indicated in this Order; and

ORDERED that Plaintiff Marcus Bell's causes of action against Defendant Sergeant Santos Trevino are **DISMISSED WITH PREJUDICE**.

The Clerk of Court is directed to close this case.

Signed on March 2, 2023.


Fernando Rodriguez, Jr.
United States District Judge